

EXHIBIT A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SUNIL KUMAR, Ph. D., PRAVEEN
SINHA, Ph. D.,

Plaintiffs,

v.

DR. JOLENE KOESTER, in her official
capacity as Chancellor of California State
University,

Defendant.

Case No. 2:22-cv-07550-RGK-MAA

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Judge: Hon. R. Gary Klausner
Trial Date: Not Set

COMPLAINT

Plaintiffs, California State University professors Sunil Kumar, Ph.D
("Professor Kumar") and Praveen Sinha, Ph.D ("Professor Sinha") (collectively
"Plaintiffs"), by and through their attorneys, Fox Rothschild LLP, hereby assert the
following causes of action against Defendant, Dr. Jolene Koester, in her official
capacity as Chancellor of California State University, ("Defendant"), as follows:

INTRODUCTION

1. On January 1, 2022, California State University ("CSU") instituted an
interim anti-discrimination policy that prohibits "[d]iscrimination based on any
Protected Status: i.e., Age, Disability (physical and mental), Gender (or sex,
including sex stereotyping), Gender Identity (including transgender), Gender
Expression, Genetic Information, Marital Status, Medical Condition, Nationality,

1 Race or Ethnicity (including color, *caste*, or ancestry), Religion (or religious creed),
2 Sexual Orientation, and Veteran or Military Status.” Ex. A, Interim CSU Policy
3 Prohibiting Discrimination, Harassment, Sexual Exploitation, Dating Violence,
4 Domestic Violence, Stalking and Retaliation (“Interim Policy”), at p. 1, Art. II (A)
5 (emphasis added).

6 2. Among the changes to the Interim Policy was the addition of “caste” to
7 discrimination based on Ethnicity.

8 3. Unfortunately, it appears that CSU either intentionally or implicitly
9 intended to wrongly and unfairly target members of the Indian/South Asian
10 community and adherents of the Hindu religion for disparate treatment under the
11 Interim Policy. For example, the State of California, under which CSU operates,
12 takes the position that “caste” is inextricably intertwined with the Hindu religion and
13 India/South Asia.

14 4. As detailed below, it seems that the intent was not the laudable goal of
15 broadly protecting individuals from discrimination based on, for example, social or
16 economic status in all of its forms, but, instead is directed to persons of Indian/South
17 Asian origin and in particular those who identify as, or are perceived to be,
18 practitioners of the Hindu religion.

19 5. Consequently, the Interim Policy seeks to define the Hindu religion as
20 including “caste” and an alleged oppressive and discriminatory caste system as
21 foundational religious tenets. That not only is an inaccurate depiction of the Hindu
22 religion, but the First Amendment to the United State Constitution prohibits
23 California and CSU from defining the contours of Hinduism (or any religion). *See,*
24 *e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020)
25 (“the Religion Clauses protect the right of churches and other religious institutions to
26 decide matters of faith and doctrine without government intrusion.”); *Commack Self-*
27 *Serv. Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 427 (2d. Cir. 2002) (Establishment

1 Clause violated where law “require[s] New York to adopt an official State position
2 on a point of religious doctrine”).

3 6. The Interim Policy also singles out only CSU’s Hindu employees,
4 professors and students, as well as those of Indian/South Asian origin. No other
5 Protected Status in the Interim Policy addresses any specific ethnicity, ancestry,
6 religion or alleged religious practice “[A]ny official action that treats a person
7 differently on account of his race or ethnic origin is inherently suspect.” *Fisher v.*
8 *Univ. of Tex.*, 570 U.S. 297, 310 (2013) (quoting *Fullilove v. Klutznick*, 448 U.S. 448,
9 523 (1980) (Stewart, J., dissenting) (internal quotation marks omitted)). That is the
10 case “even for so-called ‘benign’ racial classifications” *Johnson v. Calif.*, 543
11 U.S. 499, 505 (2005) (citations omitted). As a result, the Interim Policy violates the
12 Equal Protection Clause of the Fourteenth Amendment.

13 7. Further, the Interim Policy does not define “caste” among its 44
14 specifically defined terms. “Caste” is not a term understood by people of ordinary
15 intelligence; indeed, many of the CSU employees, professors and students who will
16 be governed by the Interim Policy are unfamiliar with the term or its meaning or
17 contexts. Therefore, the Interim Policy is unconstitutionally vague in violation of the
18 Due Process Clause of the Fourteenth Amendment.

19 8. Plaintiffs are Hindu professors at CSU who are of Indian descent. They
20 bring this action to prevent Defendant from enforcing the Interim Policy and to
21 safeguard their constitutional rights, as well as the rights of other CSU employees,
22 professors and students who are similarly situated.

23 9. While Plaintiffs applaud CSU’s effort to take a firm stance in favor of
24 inclusion and against discrimination – something on which they are in complete
25 agreement – the addition of “caste” as a form of “Ethnicity” in the Interim Policy’s
26 Protected Statuses unfairly singles out and targets them as persons of Indian/South
27 Asian origin and members of the Hindu religion.

1 17. Plaintiff Praveen Sinha, Ph. D., is a professor of Accountancy in the
2 College of Business Administration at California State University, Long Beach,
3 which is a CSU school. Professor Sinha was born in India and is an adherent of
4 Hinduism.

5 18. Both Professor Kumar and Sinha hold the sincere religious belief that
6 neither caste nor a discriminatory caste system are in any way part of the Hindu
7 religion or its teachings. To the contrary, they abhor the notion that a caste system is
8 a tenet of Hinduism and sincerely believe that the Hindu religion's core principals
9 are compassion, equanimity, generosity, and equal regard for all humans in order to
10 honor the divine in everyone, which is directly contrary to a discriminatory caste
11 system.

12 19. In addition, Plaintiffs do not identify as being members of any caste and
13 fear that CSU will ascribe a caste to them under the Interim Policy. Indeed, how else
14 will CSU be able to determine if discrimination based on caste occurred unless they
15 ascribe a caste not only to the allegedly discriminating actor but to the alleged victim
16 as well?

17 20. By linking the Hindu religion with a caste system and caste
18 discrimination, California and CSU have infringed the constitutional rights of
19 Plaintiffs by singling out their religious beliefs for ridicule, by seeking to define the
20 Hindu religion's practices and customs as including a caste system, and by
21 improperly ascribing to it an oppressive and discriminatory intent.

22 21. Further, the use of caste in the Interim Policy singles out Plaintiffs and
23 others from India/South Asia.

24 22. Plaintiffs fully support efforts to end all discrimination on CSU
25 campuses, and elsewhere, that are consistent with the United States and California
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1 Constitutions, and which do not single out any religion, alleged religious practice or
2 group of individuals (like Indians and South Asians or Hindus).¹

3 23. California State University, which is not a Party to this action, is a public
4 university operated by the State of California with 23 campuses across the State. *See*
5 *Steshenko v. Gayrard*, 44 F. Supp. 3d 941, 949 (N.D. Cal. 2014) (citing *Stanley v.*
6 *Trs. Of the Cal. State. Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006)); The California
7 State University, The CSU System, About the CSU, [https://www.calstate.edu/csu-](https://www.calstate.edu/csu-system/about-the-csu/Pages/default.aspx)
8 [system/about-the-csu/Pages/default.aspx](https://www.calstate.edu/csu-system/about-the-csu/Pages/default.aspx) (last visited Sept. 16, 2022).

9 24. Defendant Dr. Jolene Koester is the Chancellor of CSU, who is
10 responsible for adopting and/or enforcing the Interim Policy. She is named as a
11 Defendant in this lawsuit in her official capacities only.

12 25. Defendant is considered to be an arm of the State of California.
13 However, because Defendant is being sued in her official capacity for prospective
14 injunctive relief, the sovereign immunity provisions of the Eleventh Amendment do
15 not apply to them.

16 JURISDICTION AND VENUE

17 26. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
18 though fully set forth herein.

19 27. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
20 because this case arises under the laws and Constitution of the United States;
21 specifically, 42 U.S.C. § 1983 *et seq.*

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25 ¹ Had the Interim Policy used neutral and generally applicable terms to broadly
26 protect individuals from discrimination based on, for example, social or economic
27 status in all of its forms, Plaintiffs would not have filed this action. Instead, the
Interim Policy uses a term that California associates only to Hinduism and that also
is directly targeted to people of Indian/South Asian descent.

1 34. Significantly, however, “caste” is not among the 44 specifically defined
 2 terms in the Interim Policy nor does it provide any explication of how caste equates
 3 in any way with ethnicity. *Id.* at pp. 6–16, Art. VII(A)(B).

4 35. Caste is not a term that is familiar to the vast majority of CSU
 5 employees, professors or students. *See* Ex. B, Jan. 18, 2022 Equality Labs Press
 6 Release at p. 2 (quoting Prof. Dr. Sarah Taylor, Chair, Dept. of Social Work, CSU
 7 East Bay that, “[f]or many of us, caste is not yet part of our regular lexicon, but it
 8 needs to be.”).

9 36. Thus, employees are left to guess – at their peril – what constitutes
 10 reportable conduct. Similarly, an employee or student who is unfamiliar with “caste”
 11 could be accused of violating the Interim Policy despite the lack of definition.

12 **CSU Equates Caste Only to the Hindu Religion and India/South Asia**

13 37. The State of California, under which CSU operates, takes the position
 14 that caste is inextricably intertwined with the Hindu religion and India. Specifically,
 15 the California Department of Civil Rights, formerly known as the Department of Fair
 16 Employment and Housing (“DFEH”)² describes “*India’s* caste system” as “a strict
 17 *Hindu* social and *religious* hierarchy . . . based on [a person’s] *religion, ancestry,*
 18 *national origin/ethnicity,* and race/color” that mandates discrimination and
 19 segregation of certain castes “by social custom and legal mandate.” Ex. C, Complaint
 20 in *Doe v. Cisco* (pending before the Superior Court of California, Santa Clara
 21 County) (“Doe Compl.”) at ¶ 1; *Id.* at ¶ 62 (emphasis added) (alleging that the
 22 California Fair Employment and Housing Act “prohibits harassment based on the
 23 employee’s protected characteristics including, but not limited to, their caste, which
 24 includes *religion, ancestry, national origin/ethnicity, and race/color*”); *id.* at ¶¶ 63–
 25 64 (same).

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 27 ² As of June 30, 2022, DFEH is now known as the Civil Rights Department.

1 38. In addition, in promulgating the Interim Policy, CSU had the support of,
2 and upon information and belief relied on, resolutions passed by the California
3 Faculty Association (“CFA”) and California State Student Association (“CSSA”),
4 which equate “caste” to people of only Indian (South Asian) origin and the Hindu
5 religion, and (incorrectly) conclude that “[c]aste is present in the *Hindu religion and*
6 *common in communities in South Asia and in the South Asian Diaspora . . .*” Ex.
7 D, CFA Resolution at p. 1 (emphasis added); *see also* Ex. E, CSSA Resolution.

8 39. Thus, as is clear from the express language of the Interim Policy,
9 California’s position in currently pending litigation, and the CFA and CSSA
10 Resolutions relied on by CSU, “caste” is the only Protected Status in the Interim
11 Policy that targets a specific religion and a specific class of CSU employees,
12 professors and students on the basis of nationality or ethnicity; all of the other
13 categories are neutral and generally applicable.

14 **LEGAL FRAMEWORK**

15 40. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
16 though fully set forth herein.

17 **The First Amendment**

18 41. The First Amendment to the United States Constitution provides, in part,
19 that “Congress shall make no law respecting an establishment of religion, or
20 prohibiting the free exercise thereof.” U.S. CONST. amend I (the “Religion Clauses”).

21 42. Those Religion Clauses are the basis of the religious freedoms enjoyed
22 in the United States.

23 43. The Religion Clauses are applicable to the States under the Fourteenth
24 Amendment. *See, e.g., Kennedy v. Bremeton Sch. Dist.*, 142 S. Ct. 2407, 2421
25 (2022).

26 44. The Religion Clauses have “‘complementary’ purposes, not warring
27 ones where one Clause is always sure to prevail over the other” *Id.* at 2426

1 (quoting *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 13 (1947)). As the Supreme
2 Court recently held:

3 Among other things, *the Religion Clauses protect the right of*
4 *churches and other religious institutions to decide matters of faith*
5 *and doctrine without government intrusion.* State interference in that
6 sphere would obviously violate the free exercise of religion, and *any*
7 *attempt by government to dictate or even influence such matters*
8 *would constitute one of the central attributes of an establishment of*
9 *religion. The First Amendment outlaws such intrusion.*

10 *Our Lady of Guadalupe Sch.*, 140 S.Ct. at 2060 (internal punctuation and citations
11 omitted) (emphasis added).

12 45. As the Supreme Court held long ago, “when . . . presented with a state
13 law granting a denominational preference, [Supreme Court] precedents demand that
14 [courts] treat the law as suspect and that [courts] apply strict scrutiny in adjudging its
15 constitutionality.” *Larson v. Valente*, 456 U.S. 228, 246–48 (1982); *see also Trump*
16 *v. Hawaii*, 138 S. Ct. 2392, 2417 (2018); *Washington v. Trump*, 847 F.3d 1151, 1167
17 (9th Cir. 2017).

18 46. This case now before the Court “pits two competing values that we
19 cherish as a nation: the principle of non-discrimination on the one hand, and the First
20 Amendment’s protection of free exercise of religion on the other hand. . . . *Under*
21 *the First Amendment, our government must be scrupulously neutral when it comes*
22 *to religion: It cannot treat religious groups worse than comparable secular ones.*”
23 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, No. 22-
24 15827, 2022 WL 3712506, at **2–3 (9th Cir. 2022) (emphasis added).

25 47. Specifically, state actors like Defendant cannot single out particular
26 religions for ridicule by ascribing to them tenets that are not part of their faith and
27 that members of that faith find repugnant.

28 48. The First Amendment *requires* that government “proceed in a manner
neutral toward and tolerant” of people’s “religious beliefs.” *Masterpiece Cakeshop*

1 *Ltd. v. Colo. C.R. Comm’n*, 138 S.Ct. 1719, 1731 (2018). And, while neutrality is
2 compelled as between religious and secular groups, there must be “strict adherence
3 to the ‘principal of denominational neutrality’” where, as here, one religion is
4 treated differently than all others. *Adair v. England*, 183 F. Supp.2d 31, 48 (D.D.C.
5 2002) (quoting *Larson*, 456 U.S. at 246–47). This has been bedrock constitutional
6 law for decades. *See, e.g., Larson*, 456 U.S. at 246 (quoting *Abington Sch. Dist. v.*
7 *Schempp*, 374 U.S. 203, 305 (1963) (internal punctuation omitted) (“the fullest
8 realization of true religious liberty requires that government effect no favoritism
9 among sects and that it work deterrence of no religious belief”)); *Epperson v.*
10 *Arkansas*, 393 U.S. 97, 98 (1968) (emphasis added) (citations omitted) (“The First
11 Amendment mandates governmental neutrality between religion and religion
12 The State may not aid or oppose any religion This prohibition is absolute.”).

13 49. The Interim Policy violates those basic tenets of the Religion Clauses
14 by ascribing an oppressive and discriminatory caste system to the entire Hindu
15 religion. In this manner, the Interim Policy ascribes a negative (and false) attribute
16 to a particular faith – Hinduism – that is not neutral or generally applicable since it
17 singles out only a supposed practice of the Hindu religion.

18 50. Not only is California constitutionally prohibited from linking a caste
19 system with the Hindu religion, that conclusion is simply wrong.

20 51. Indeed, Plaintiffs here do not believe in nor engage in caste
21 discrimination at all. Rather, they abhor it, as they abhor all forms of discrimination.
22 It is their sincerely held religious belief that the Hindu religion in no way includes or
23 endorses an oppressive and discriminatory caste system, yet CSU and the State have
24 now told them that it is a part of their religion.

25 The Equal Protection Clause

26 52. The Equal Protection Clause of the Fourteenth Amendment “prohibits
27 the government from classifying people based on suspect classes, unless the

1 classification is narrowly tailored to satisfy a compelling governmental interest . . .
2 .” *Al Saud v. Days*, 36 F.4th 949, 953 (9th Cir. 2022) (citing *Kadmas v. Dickinson*
3 *Pub. Sch.*, 487 U.S. 450, 457–58 (1988)).

4 53. “[A]ny official action that treats a person differently on account of his
5 race or ethnic origin is inherently suspect.” *Fisher*, 570 U.S. at 310 (quoting
6 *Fullilove*, 448 U.S. at 523).

7 54. Consequently, the general rule is that when a state actor explicitly treats
8 an individual differently on the basis of race, strict scrutiny is applied. *Id.*; *Johnson*,
9 543 U.S. at 505; *Adarand Const., Inc. v. Pena*, 515 U.S. 200, 227 (1995). The
10 Supreme Court has “insisted on strict scrutiny in every context, even for so-called
11 ‘benign’ racial classifications, such as race-conscious university admissions policies,
12 race-based preferences in government contracts, and race-based districting intended
13 to improve minority representation.” *Johnson*, 543 U.S. at 505.

14 55. Race, ethnicity, national origin and religion are protected classes under
15 the Equal Protection Clause. *See, e.g., Days*, 36 F. 4th 954; *Mitchell v. Washington*,
16 818 F.3d 436, 444–45 (9th Cir. 2018).

17 56. By drafting the Interim Policy to specifically include caste within the
18 meaning of ethnicity, CSU impermissibly singled out Hindu employees, professors
19 (like Plaintiffs) and students, and those of Indian/South Asian origin, based on their
20 perceived national origin or ancestry (Indian/South Asian) and religion (Hinduism).

21 57. The Interim Policy singles out Plaintiffs (as well as others similarly
22 situated) with inaccurate stereotypes – that they adhere to a “caste system”
23 characterized as a racist and inhumane system of discrimination and violence against
24 others. Ex. E, CSSA Resolution at p. 1 (erroneously concluding that caste is “a
25 structure of oppression,” where “[c]aste oppressed groups . . . experience brutal
26 violence at the hands of ‘upper’ castes . . .”).

The Due Process Clause – Vagueness

58. The Due Process Clause of the Fourteenth Amendment requires:

First, laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. . . . The vagueness doctrine’s second requirement aims to avoid arbitrary and discriminatory enforcement, and demands that laws provide explicit standards for those who apply them. A law that relies on a subjective standard—such as whether conduct amounts to an annoyance—is constitutionally suspect.

Edge v. City of Everett, 929 F.3d 657, 664–65 (9th Cir. 2019) (internal citations and quotation marks omitted); *see also Arce v. Douglas*, 793 F.3d 968, 988 (9th Cir. 2015). This is referred to as the vagueness doctrine. *See Edge*, 929 F.3d at 664.

59. In sum, while a statute or policy need not be perfectly clear in order to survive a vagueness challenge, it must nonetheless provide a code of conduct that ordinary citizens can follow to reasonably avoid violation. *See Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp.2d 987, 1021 (E.D. Cal. 2006) (internal citations and quotation marks omitted) (“If a statute is not sufficiently clear to provide guidance to citizens concerning how they can avoid violating it and to provide authorities with principles governing enforcement, the statute is invalid.”); *Santa Cruz Lesbian & Gay Comm. Ctr. v. Trump*, 508 F. Supp.3d 521, 536 (N.D. Cal. 2020) (executive orders considered void for vagueness when they left plaintiffs unsure as to whether they could continue providing diversity and inclusion training without violating them).

60. The Interim Policy is unconstitutionally vague to the extent that it prohibits discrimination based on “caste.”

61. While the Interim Policy defines 44 terms, “caste” is not one of them (Ex. A, Interim Policy at pp. 6–16, Art. VII(A)(B)), and the Interim Policy provides no other explanation for why it includes “caste” within the meaning of “Ethnicity.”

68. Plaintiffs are therefore entitled to declaratory relief declaring the Interim Policy to be unconstitutional to the extent that it references “caste” and to injunctive relief enjoining Defendant from enforcing the “caste” provision of the Interim Policy.

**SECOND CLAIM FOR VIOLATION OF FREE EXERCISE CLAUSE OF
THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION –
42 U.S.C. § 1983**

69. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

70. 42 U.S.C. §1983 prohibits any state actor or person acting under color of state law from depriving others of their rights, privileges, or immunities under the United States Constitution.

71. Defendant was a state actor and/or acting under color of state law when the Interim Policy was promulgated.

72. Defendant is a state actor and/or acting under color of state law in enforcing the Interim Policy.

73. Violations of the First Amendment are actionable under 42 U.S.C. § 1983.

74. “The [Free Exercise Clause of the] First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2055 (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

75. The Interim Policy violates the Free Exercise Clause of the First Amendment by, *inter alia*, defining the contours and practices of the Hindu religion by impermissibly (and erroneously) concluding that inherent to the teachings and

1 practices of Hinduism is a “caste system” characterized as a racist and inhumane
2 system of discrimination and violence against others.

3 76. The Interim Policy is neither neutral nor generally applicable in that it,
4 *inter alia*, refers to caste (which California and CSU consider to be a “religious
5 practice” of Hinduism); is being specifically applied only to the Hindu religion; and
6 does not apply to any other sincerely-held religious beliefs.

7 77. The Interim Policy is not narrowly tailored to meet a compelling
8 government interest.

9 78. As a result of the Interim Policy violating the Free Exercise Clause,
10 Plaintiffs have suffered a *de facto* irreparable injury.

11 79. Enforcing the Interim Policy will not only cause Plaintiffs (and others
12 similarly situated) to live with the fear of being disciplined for committing
13 discrimination they did not commit, such accusations – and indeed the mere
14 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
15 throughout the rest of their careers.

16 80. Similarly, because the Interim Policy does not describe what
17 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
18 discrimination is), *any* employee within the CSU system, regardless of their ancestry
19 or actual religious beliefs, could be subject to losing privileges at the university, their
20 tenures, or even their professorship positions, if they are even *accused of* caste
21 discrimination.

22 81. Plaintiffs have no adequate remedy at law to prevent or redress the
23 irreparable injuries alleged herein.

24 82. Unless Defendant is enjoined and restrained from enforcing the portion
25 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
26 irreparably injured, as they will be deprived of their rights under the United States
27 Constitution forever.

1 83. As Plaintiffs' constitutional violations are ongoing and capable of
2 repetition, Plaintiffs are entitled to injunctive relief.

3 84. Because Defendant's actions required Plaintiffs to retain counsel and
4 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the
5 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
6 42 U.S.C. § 1988(b).

7
8 **THIRD CLAIM FOR VIOLATION OF THE ESTABLISHMENT CLAUSE**
9 **OF THE FIRST AMENDMENT TO THE UNITED STATES**
10 **CONSTITUTION – 42 U.S.C. § 1983**

11 85. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
12 though fully set forth herein.

13 86. CSU and California, through the Interim Policy and elsewhere, have
14 unilaterally determined that the contours of Hinduism include caste and an oppressive
15 and discriminatory caste system.

16 87. No other religion or religious practice is included in the Interim Policy.

17 88. The Interim Policy is not narrowly tailored to meet a compelling
18 government interest.

19 89. Defendant was a state actor and/or acting under color of state law when
20 the Interim Policy was promulgated.

21 90. Defendant is a state actor and/or acting under color of state law in
22 enforcing the Interim Policy.

23 91. As a result of the Interim Policy violating the Establishment Clause,
24 Plaintiffs have suffered a *de facto* irreparable injury.

25 92. Enforcing the Interim Policy will not only cause Plaintiffs (and others
26 similarly situated) to live with the fear of being disciplined for committing
27 discrimination they did not commit, such accusations – and indeed the mere
28

1 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
2 throughout the rest of their careers.

3 93. Similarly, because the Interim Policy does not describe what
4 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
5 discrimination is), *any* employee within the CSU system, regardless of their ancestry
6 or actual religious beliefs, could be subject to losing privileges at the university, their
7 tenures, or even their professorship positions, if they are even *accused of* caste
8 discrimination.

9 94. Plaintiffs have no adequate remedy at law to prevent or redress the
10 irreparable injuries alleged herein.

11 95. Unless Defendant is enjoined and restrained from enforcing the portion
12 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
13 irreparably injured, as they will be deprived of their rights under the United States
14 Constitution forever.

15 96. As Plaintiffs’ constitutional violations are ongoing and capable of
16 repetition, Plaintiffs are entitled to injunctive relief.

17 97. Because Defendant’s actions required Plaintiffs to retain counsel and
18 incur attorneys’ fees and costs to bring this action, Plaintiffs are entitled to the
19 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
20 42 U.S.C. § 1988(b).

21
22 **FOURTH CLAIM FOR VIOLATION OF THE NO PREFERENCE AND**
23 **ESTABLISHMENT CLAUSES OF THE CALIFORNIA CONSTITUTION**

24 98. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
25 though fully set forth herein.

26 99. The No Preference and Establishment Clauses of the California
27 Constitution (the “Religion Clauses of the California Constitution”) provide that

1 “[f]ree exercise and enjoyment of religion without discrimination or preference are
2 guaranteed The Legislature shall make no law respecting an establishment of
3 religion.” Cal. Const., art. I, § 4.

4 100. The Religion Clauses of the California Constitution offer religion the
5 same, if not more, protections as those under the Federal Constitution. *See Barnes*
6 *Wallace v. City of San Diego*, 704 F.3d 1067, 1082 (9th Cir. 2012). Accordingly,
7 Defendant has violated the Religion Clauses of the California Constitution for
8 reasons discussed *supra*.

9 101. The Interim Policy does not satisfy strict scrutiny for the reasons
10 discussed *supra*.

11 102. Enforcing the Interim Policy will not only cause Plaintiffs (and others
12 similarly situated) to live with the fear of being disciplined for committing
13 discrimination they did not commit, such accusations – and indeed the mere
14 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
15 throughout the rest of their careers.

16 103. Similarly, because the Interim Policy does not describe what
17 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
18 discrimination is), **any** employee within the CSU system, regardless of their ancestry
19 or actual religious beliefs, could be subject to losing privileges at the university, their
20 tenures, or even their professorship positions, if they are even **accused of** caste
21 discrimination.

22 104. Unless Defendant is enjoined and restrained from enforcing the portion
23 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
24 irreparably injured, as they will be deprived of their rights under the United States
25 Constitution forever.

26 105. As Plaintiffs’ constitutional violations are ongoing and capable of
27 repetition, Plaintiffs are entitled to immediate and permanent injunctive relief.

**FIFTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION
CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED
STATES CONSTITUTION – 42 U.S.C. § 1983**

106. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

107. Pursuant to the Fourteenth Amendment to the United States Constitution, no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

108. Violations of the Equal Protection Clause are actionable under 42 U.S.C. § 1983.

109. The Equal Protection Clause “prohibits the government from classifying people based on suspect classes, unless the classification is narrowly tailored to satisfy a compelling governmental interest (*i.e.*, the government’s action passes strict scrutiny).” *Days*, 36 F.4th at 953 (citing *Kadmas*, 487 U.S. at 457–58).

110. The Interim Policy creates *de facto* suspect classes by targeting Hindus (religion) and people of Indian/South Asian descent (ancestry) while no other religion or ancestry is treated similarly.

111. Defendant was a state actor and/or acting under color of state law when the Interim Policy was promulgated.

112. Defendant is a state actor and/or acting under color of state law in enforcing the Interim Policy.

113. The Interim Policy singles out Plaintiffs, as well as other Hindu CSU employees, professors and students and those of Indian/South Asian origin.

114. By including “caste” in the Interim Policy, Defendant impermissibly created, and therefore targeted, suspect classes of Hindu CSU employees, professors, and students and those of Indian/South Asian origin.

1 115. No other religion, alleged religious practice, or ancestry are contained
2 in the Interim Policy.

3 116. Plaintiffs have no adequate remedy at law to prevent or redress the
4 irreparable injuries alleged herein.

5 117. Unless Defendant is enjoined and restrained from enforcing the portion
6 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
7 irreparably injured, as they will be deprived of their rights under the United States
8 Constitution forever.

9 118. As Plaintiffs' constitutional violations are ongoing and capable of
10 repetition, Plaintiffs are entitled to injunctive relief.

11 119. Because Defendant's actions required Plaintiffs to retain counsel and
12 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the
13 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
14 42 U.S.C. § 1988(b).

15
16 **SIXTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION**
17 **CLAUSE OF THE CALIFORNIA STATE CONSTITUTION RELIEF**

18 120. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
19 though fully set forth herein.

20 121. "The equal protection analysis under the California Constitution is
21 substantially similar to analysis under the federal Equal Protection Clause." *Cal.*
22 *Growers Ass'n v. City of Long Beach*, 521 F. Supp.3d 902, 912 (C.D. Cal. 2021)
23 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004)).
24 Accordingly, the Interim Policy violates the equal protection clause of the California
25 Constitution for the reasons set forth *supra*.

1 122. As explained above, Plaintiffs have and will continue to suffer harm as
2 a result of the violation of the Equal Protection Clause of the California state
3 constitution.

4
5 **SEVENTH CLAIM FOR VIOLATION OF THE DUE PROCESS CLAUSE**
6 **OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES**
7 **CONSTITUTION – 42 U.S.C. § 1983**

8 123. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
9 though fully set forth herein.

10 124. “A fundamental principle in our legal system is that laws which regulate
11 persons or entities must give fair notice of conduct that is forbidden or required.”
12 *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012).

13 125. A government policy, statute or regulation violates the Due Process
14 Clause of the Fourteenth Amendment where it “is unclear as to what facts must be
15 proved” to violate it. *United States v. Williams*, 553 U.S. 285, 306 (2008).

16 126. Such vagueness claims are actionable under 42 U.S.C. § 1983.

17 127. The Ninth Circuit has explained that the vagueness doctrine contains
18 two separate requirements:

19 First, laws [must] give the person of ordinary intelligence a reasonable
20 opportunity to know what is prohibited, so that he may act
21 accordingly. . . . The vagueness doctrine’s second requirement aims
22 to avoid arbitrary and discriminatory enforcement, and demands that
23 laws provide explicit standards for those who apply them. A law that
24 relies on a subjective standard—such as whether conduct amounts to
25 an annoyance—is constitutionally suspect.

26 *Edge*, 929 F.3d at 664.

27 128. The Interim Policy violates the vagueness doctrine by prohibiting
28 “caste” discrimination without defining that term. Indeed, it is not among the 44

1 other specifically defined terms in the Interim Policy. Ex. A, Interim Policy at pp.
2 6–16, Art. VII(A)(B).

3 129. The term is so vague that people of ordinary intelligence do not know
4 what conduct is prohibited by the Interim Policy. In fact, many of the CSU
5 employees, professors, and students who are governed by the Interim Policy are not
6 familiar with the meaning of the term “caste.”

7 130. The Interim Policy does not provide explicit standards sufficient to
8 survive a vagueness challenge.

9 131. Thus, the Interim Policy is unconstitutionally vague in violation of the
10 Due Process Clause to the extent that it prohibits discrimination based on “caste.”

11 132. Enforcing the Interim Policy will not only cause Plaintiffs (and others
12 similarly situated) to live with the fear of being disciplined for committing
13 discrimination they did not commit, such accusations – and indeed the mere
14 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
15 throughout the rest of their careers, potentially having negative implications such as
16 the denial of tenure or the loss of their positions in academia.

17 133. Similarly, because the Interim Policy does not describe what
18 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
19 discrimination is), *any* employee within the CSU system, regardless of their ancestry
20 or actual religious beliefs, could be subject to losing privileges at the university, their
21 tenures, or even their professorship positions, if they are even *accused of* caste
22 discrimination.

23 134. Unless Defendant is enjoined and restrained from enforcing the portion
24 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
25 irreparably injured, as they will be deprived of their rights under the United States
26 Constitution forever.

1 135. As Plaintiffs' constitutional violations are ongoing and capable of
2 repetition, Plaintiffs are entitled to injunctive relief.

3 136. Because Defendant's actions required Plaintiffs to retain counsel and
4 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the
5 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
6 42 U.S.C. § 1988(b).

7
8 **EIGHTH CLAIM FOR VOID FOR VAGUENESS UNDER THE**
9 **CALIFORNIA CONSTITUTION RELIEF**

10 137. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
11 though fully set forth herein.

12 138. "A void for vagueness challenge can be brought under either the
13 California constitution or the Fourteenth Amendment of the U.S. Constitution."
14 *Nat'l City Puppy, LLC v. City of Nat'l City*, No. 19cv1942, 2019 WL 5550247, at *2
15 n.1 (S.D. Cal. Oct. 28, 2019) (quoting *People v. Toledo*, 26 Cal. 4th 221, 228–29
16 (2001)); *see also Martinez v. City of Fresno*, No. 1:22-cv-00307, 2022 WL 1645549,
17 at *12 (E.D. Cal. May 24, 2022). Accordingly, the Interim Policy is void for
18 vagueness under the California Constitution for the same reasons it is void for
19 vagueness under the Federal Constitution.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendant,
22 in her official capacities, and relief as follows:

- 23 a. For a preliminary injunction enjoining Defendant from enforcing
24 the Interim Policy to the extent that it prohibits discrimination
25 based on "caste";

- 1 b. For permanent injunctive relief preventing Defendant from
2 enforcing the Interim Policy to the extent that it prohibits
3 discrimination based on “caste”;
4 c. For a declaration that the Interim Policy is unconstitutional to the
5 extent that it prohibits discrimination based on “caste”;
6 d. For attorneys’ fees and costs; and
7 e. For such other and further relief as this Court deems just and
8 appropriate.

9 Dated: February 27, 2023

Respectfully submitted,

10 /s/ John Shaeffer

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DEMAND FOR JURY TRIAL

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure.
Plaintiffs hereby demand trial by jury on all issues so triable.

Dated: February 27, 2023

Respectfully submitted,

/s/ John Shaffer

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